



NATURAL RESOURCES DEFENSE COUNCIL

August 4, 2006

Via electronic mail and U.S. Mail

Elizabeth Jennings
Office of Chief Counsel
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Ms. Jennings,

Please find enclosed the petition for review submitted by the Natural Resources Defense Council and Heal the Ocean, captioned "*In the Matter of Petition of NRDC and Heal the Ocean for Review of Action by the California Regional Water Quality Control Board, Central Coast Region, In Approving the County of Santa Barbara Storm Water Management Program. Resolution No. R-3-2006-0045*" ("petition for review"). As we have indicated previously, we are requesting that the petition for review be held in abeyance for the standard one-year period by the State Water Resources Control Board. In this connection, based on the permission we received earlier from your office to provide sufficient citations in the petition for review *in lieu* of separate points and authorities, we are not enclosing separate points and authorities at this time. Also, as we discussed, NRDC and Heal the Ocean reserve the right to submit further briefing if the petition for review is taken out of abeyance.

Please feel free to contact me if you have any questions about the petition for review at 310-434-2300.

Sincerely,

Anjali I. Jaiswal
Natural Resources Defense Council

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

15 In the Matter of the Petition of NRDC and)
16 Heal The Ocean For Review of Action)
17 by the California Regional Water Quality)
18 Control Board, Central Coast Region,)
19 In Approving the County of Santa Barbara)
20 Storm Water Management Program.)
21 Resolution No. R3-2006-0045,)

PETITION FOR
REVIEW OF CENTRAL
COAST REGIONAL WATER
QUALITY CONTROL
BOARD ACTION OF
ADOPTING RESOLUTION NO.
R3-2006-0045,

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Introduction

21 Adoption of a weak program that fails to adequately address polluted urban runoff—a
22 “leading cause of pollution throughout California”—and meet federal and state standards, coupled
23 with violations of fundamental public participation and procedural obligations, constitutes an
24 arbitrary and capricious action resulting in an abuse of discretion. (General Permit at 1; 33 U.S.C.
25 § 1342(p)(3)(B); 40 C.F.R. §§ 122.26, 122.34; Cal. Code Proc. § 1094.5; Wat. Code § 13320.)
26 Pursuant to Section 13320 of the California Water Code and Section 2050 of Title 23 of the
27 California Code of Regulations, The Natural Resources Defense Council (“NRDC”) and Heal the
28 Ocean (“HTO”) hereby petition the State Water Resources Control Board (“State Board”) to

1 review the July 7, 2006 final decision of the California Regional Water Quality Control Board for
2 the Central Coast Region ("Regional Board") approving the Storm Water Management Program
3 for the County of Santa Barbara ("County"), Resolution R3-2006-0045. At this time, NRDC and
4 HTO respectfully request that this Petition be held in abeyance pending subject program additions
5 and amendments by the County of Santa Barbara as contained in the Board's approval Resolution
6 (discussed further below).

7 The Santa Barbara County Storm Water Management Program ("SWMP") is required by,
8 and must comply with, the Waste Discharge Requirements for Storm Water Discharges from
9 Small Municipal Separate Storm Sewer Systems (General Permit) (SWRCB Water Quality Order
10 NO. 2003-0005-DWQ; NPDES General Permit No. CAS000004). The SWMP is the operative
11 document whereby designees who fall under the General Permit detail how they will reduce
12 pollutant discharges to the Maximum Extent Practicable ("MEP") and protect water quality.

13 The General Permit specifies that a SWMP must commit to implementation of Best
14 Management Practices ("BMPs") to address six Minimum Control Measures ("MCMs"),
15 including: Public Education and Outreach; Public Involvement/Participation; Illicit Discharge
16 Detection and Elimination; Construction Site Storm Water Runoff Control; Post-Construction
17 Storm Water Management in New Development and Redevelopment; and Pollution
18 Prevention/Good Housekeeping for Municipal Operations. (General Permit at p. 8-13, Attachment
19 4; 40 C.F.R. § 122.34.) The SWMP must detail commitment and implementation of MCMs
20 accompanied with measurable goals and implementation time schedules. Ultimately, the SWMP
21 must ensure compliance with water quality standards.

22 The petition is brought to remedy both substantive and procedural violations.
23 Substantively, the SWMP utterly fails to meet the federal and state requirements as set forth in the
24 General Permit, the Clean Water Act, and the Porter-Cologne Act. Specifically, the SWMP fails
25 to meet the Maximum Extent Practicable standard and protect water quality because of its vagaries
26 and inadequacies in critical components of the program, as enumerated in Section 4, below. (33
27 U.S.C. § 1342(p)(3)(B)(iii); 40 C.F.R. § 126.34; *Environmental Defense Center v. EPA* (9th Cir.
28 2003) 344 F.3d 832; *Building Industry Association v. State Water Resources Control Board* (2004)

1 124 Cal.App.4th 866; *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159.)
2 Procedurally, in adopting the weak SWMP, the Regional Board violated fundamental public
3 participation, procedural and fair hearing obligations, also enumerated in Section 4, below. (40
4 C.F.R. §§ 25.3; 25.5; Water Code §§ 13384; 13801; *Environmental Defense Center v. EPA* (9th
5 Cir. 2003) 344 F.3d 832; Cal. Code of Regs. § 11384.) Despite publicly recognizing these points
6 as true during the adoption process, the Regional Board nonetheless inappropriately and illegally
7 approved the program on a theory that “poor coverage is better than no coverage.”

8 Summary of Factual Background and Relevant Time Periods

9 The Regional Board’s public process began on January 19, 2006, when staff noticed the
10 public that it believed the County’s December 30, 2005 draft SWMP was compliant with the
11 General Permit and posted it to the Board’s website.¹ The notice indicated written comments and
12 requests for hearing were to be submitted by March 17, 2006.²

13 On March 8, 2006 Regional Board chair Jeff Young met *ex parte* with County staff project
14 manager Rob Almy to discuss “Phase II Storm Water Permitting issues.” On March 9, 2006, Mr.
15 Young transmitted to Board Executive Officer Roger Briggs a memorandum detailing the
16 substance of this discussion.

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19 ¹ All referenced documents are available in the Regional Board’s files as part of the administrative
20 record in this matter.

21 ² The County of Santa Barbara submitted its Notice of Intent to seek coverage under the General
22 Permit on March 10, 2003. Thus began reviews of draft versions of the SWMP by Regional Board
23 staffmember Peter von Langen, resulting in multiple letters to the County indicating serious
24 deficiencies and fatal flaws with the proposed document. (See e.g., Letters from Regional Board
25 to County of Santa Barbara dated June 27, 2004 and July 8, 2005.) The letters included detailed
26 lists of amendments necessary to meet applicable General Permit and MEP requirements. In the
27 latter half of 2005, Mr. von Langen was replaced by staffmember Ryan Lodge. It seems that
28 Regional Board staff cast aside its role as the regulating agency by failing to maintain the attention
to detail and appropriately high standards it had previously devoted to the review of SWMP. In fact,
from the record available to Petitioners it appears at this point Board staff ceased providing any
meaningful comment or oversight whatsoever regarding the County SWMP submission and
approval process.

1 Comment letters challenging the adequacy of the final draft SWMP and requesting a
2 formal hearing were submitted by Heal the Ocean and NRDC as well as other individuals and
3 groups.³ (See letters from Coast Law Group LLP on behalf of Heal the Ocean, dated March 17,
4 2006; NRDC dated March 17, 2006.)

5 Heal the Ocean's letter reflected particular concern for the lack of coordination between the
6 County and municipalities within its boundaries, especially as concerned jurisdictional
7 responsibilities for the CWA 303(d)-listed Santa Ynez and Santa Maria rivers. HTO faulted the
8 County SWMP for failing to provide even the most basic map showing its jurisdictional
9 boundaries in relation to receiving waters, as well as the failure to include a meaningful water
10 quality monitoring program. The letter incorporated by reference six prior comment letters sent by
11 HTO to the County and Regional Board over a nearly four year period.

12 The Natural Resources Defense Council ("NRDC") comment letter built upon experience
13 the group garnered from participation in public processes for several SWMPs throughout the State.
14 NRDC commented, *inter alia*, on the total lack of coordination among the municipal entities in
15 comprehensively addressing polluted urban runoff; the SWMPs failure to meet MEP and the
16 public inability to review the SWMP given its vague elements; and lack of a commitment to water
17 quality monitoring. Importantly, NRDC provided significant documentation of practicable
18 program elements in its 80-page report entitled *A Practical Plan for Pollution Prevention: Urban*
19 *Runoff Solutions for the Monterey Region*. The letter also recommended review of the draft
20 SWMP in light of "Model Urban Runoff Program: A How-To-Guide for Developing Urban
21 Runoff Programs for Small Municipalities" compiled by various Region 3 cities and the Regional
22 Board. Like the other commentators, NRDC criticized the draft SWMP for failing to meet MEP

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25 ³ In good-faith efforts to work with the permittee, members of the environmental community,
26 including Petitioners, reviewed early drafts of the SWMP prior to its final submittal to the
27 Regional Board for approval. Because this petition challenges the illegality of the final document
28 and the process for approval by the Regional Board, details regarding preliminary efforts are
irrelevant. More importantly, these preliminary efforts do not satisfy the Regional Board's
statutory obligations with respect to a fair hearing, public participation, and due process.

1 and protect water quality as required by the General Permit. NRDC also submitted a ream of
2 documents supporting a stronger SWMP.

3 Departing from its normal practice, on April 19, 2006, approximately one month after
4 receiving reams of comments and documents on the draft SWMP, the Regional Board re-noticed
5 the *exact same* draft of the SWMP that had already been posted to its website and commented on
6 by the public and simultaneously noticed a hearing for formal adoption of the SWMP for July 7,
7 2006 in San Luis Obispo. With no response to the environmental groups' comments submitted
8 during the previous comment period, and with no amendments required or proposed for the final
9 draft SWMP, the Regional Board offered an entirely meaningless opportunity to submit additional
10 comments by May 19, 2006. The notice was explicit that the public comment period would close
11 at that time.

12 In response, HTO counsel had a conference call with Board staff and Board counsel, after
13 which on April 25, 2006 it submitted a comment letter specifically addressing the procedural
14 irregularity of offering comments on the same document twice. HTO noted that the proposed
15 schedule, which would have responses to comments withheld from the public until at least June
16 21, 2006, would give Board and County staff in excess of 60 days to review the letters and
17 generate responses. Further, because the public comment period was closed, there would be no
18 opportunity whatsoever for interested parties to submit written comments on any proposed
19 substantive revisions to the SWMP or to rebut responses to public comments. HTO's letter also
20 requested that the final SWMP hearing be held in Santa Barbara County instead of San Luis
21 Obispo County as was being proposed by Board staff. NRDC also contacted Regional Board staff
22 with similar concerns.

23 With no Board response and the hearing quickly approaching, on June 13, 2006 Coast Law
24 Group sent a letter to Regional Board chair Jeff Young and staff detailing HTO's continued
25 concerns with the process undertaken for SWMP approval. The letter noted that Board and
26 County staff had recently met with the environmental group representatives and indicated that
27 "changes and additions would indeed be made to the draft SWMP, but that there would be no
28 public indication what those changes would be until a staff report is issued just prior to the

1 scheduled hearing.” The letter requested (a) that the Board reschedule the hearing to allow for
2 sufficient public review of changes proposed for the SWMP, and (b) that the meeting be
3 appropriately held in Santa Barbara County. NRDC also contacted Regional Board staff with the
4 same request.

5 On June 19, 2006, State Water Board Senior Staff Counsel Lori Okun sent a response to
6 CLG’s letter. She stated that the proposed changes in the Resolution were “not significant enough
7 to trigger a new public review period,” and that there existed no legal mandate for the hearing to
8 be held in the affected community. She also baldly asserted that, “several of the commenters noted
9 that there was no public interest in the local storm water coordination meetings that the County has
10 tried to coordinate” and that representatives regularly traveled well outside of Santa Barbara to
11 attend meetings.

12 On or about June 21, 2006 — only approximately two weeks before the hearing — the
13 Board staff posted the draft Resolution of approval and responses to comments on its website. The
14 schizophrenic draft Resolution on the one hand contained a finding that the SWMP “is designed to
15 reduce the discharge of pollutants to the MEP standard established in the General Permit,” while at
16 the same time mandating that 12 categories of *substantive* additions and/or amendments to the
17 SWMP be completed by August 31, 2006, and submitted to the Board by September 15, 2006.
18 However, the Board provided no opportunity for written comments on the reviewed SWMP — the
19 program that would be approved by the Board. Moreover, the responses to comments typically
20 either (a) ignored substantive comments; (b) admitted SWMP inadequacy and stated the problem
21 would be fixed by compliance with the Resolution; or, (c) dismissed the comment as irrelevant or
22 inapplicable. No provision for public review of the final SWMP with required additions and
23 amendments was allowed.

24 At its July 7, 2006, hearing the Regional Board approved the Santa Barbara County SWMP
25 and Resolution R3-2006-0045. After a detailed presentation by HTO and NRDC, as well as
26 comments by the public and stakeholders, a majority of the Board explicitly and on the record
27 recognized failures of the SWMP to meet General Permit requirements. In particular, the Board
28 recognized the lack of maps and permit coverage detail and the vagaries in the SWMP, including

1 many instances in which the entire program components had yet to be developed. Neither Board
2 nor County staff could adequately respond to Boardmember questions as to how County permit
3 coverage areas were determined or discarded. Individual Boardmembers addressed numerous areas
4 where they agreed the SWMP would not reduce pollutants to the MEP standard.

5 Nonetheless, the Board approved the SWMP. It attempted to justify its approval on the
6 notion that SWMP inadequacies could be addressed at a later date either through the changes
7 required in the approval Resolution or in response to SWMP annual reports throughout the five
8 year permit term.⁴ In sum, it appeared that it was more important to the Board to achieve permit
9 coverage under an illegal SWMP at the July 7, 2006 hearing than to await rectification of the
10 SWMP and approval at a subsequent board hearing.

11 1. PETITIONERS' NAMES, ADDRESSES, TELEPHONE NUMBERS, AND EMAIL
12 ADDRESSES:

13 NATURAL RESOURCES DEFENSE COUNCIL, INC.

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17 Santa Monica, CA 90401

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28 COAST LAW GROUP LLP (Attorneys for Heal the Ocean)

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⁴ Moreover, at the hearing, the Board Chair notified the public and admitted to participating in *ex-parte* communications and NRDC timely objected to the impermissible *ex-parte* communication in a letter to the Board dated July 14, 2006.

1 2. THE ACTION OR INACTION OF THE REGIONAL BOARD BEING PETITIONED
2 INCLUDING A COPY OF THE ACTION BEING CHALLENGED:

3 NRDC and Heal the Ocean (collectively “Petitioners”) seek review of the Regional Board’s
4 July 7, 2006 approval of the County of Santa Barbara Storm Water Management Program,
5 Resolution No. R3-2006-0045. A copy of the Resolution is attached to this petition.
6

7 3. THE DATE ON WHICH THE REGIONAL BOARD ACTED:

8 July 7, 2006.
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10 4. A STATEMENT OF THE REASONS THE ACTION WAS INAPPROPRIATE OR
11 IMPROPER:

12 In approving the SWMP, the Regional Board failed to act in accordance with relevant
13 governing law, acted arbitrarily and capriciously, without substantial evidence, and without
14 adequate findings. Specifically, but without limitation, the Regional Board:

15
16 A. Failed to comply with the mandates of *Environmental Defense Center v.*
17 *EPA* (9th Cir. 2003) 344 F.3d 832 by acknowledging insufficiencies with
18 the draft final SWMP and mandating rectification via resolution without
19 appropriate opportunity for public review and comment of a final document.
20 (33 U.S.C. § 1342(a)(1); 40 C.F.R. § 122.34(b); *Armstrong v. Manzo* 380
21 U.S. 545, 552 (1965) (failure to provide adequate public opportunity to be
22 heard “in a meaningful manner.”);

23 B. Failed to make sufficient findings “to bridge the analytical gap between the
24 raw evidence and ultimate decision”—approval of the SWMP. (*Topanga*
25 *Assn. for Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506,
26 515.) The Board acted arbitrarily and capriciously because the ultimate
27 decision of adopting the SWMP is not supported by the findings, the
28 findings are not supported by the weight of the evidence in the

1 administrative record, and the administrative record does not support the
2 ultimate decision adopting the SWMP, thus, resulting in an abuse of
3 discretion. (*Id.*; Cal. Code Proc. § 1094.5.)

4 C. Failed to assure that the SWMP applies to all appropriate Census Bureau
5 urbanized areas, including those adjacent to and affecting 303d-listed water
6 bodies. (General Permit Fact Sheet, pp.2-4; General Permit, Finding 10 and
7 Attachments 1, 2; 40 C.F.R. § 122.34; *Environmental Defense Center v.*
8 *EPA* (9th Cir. 2003) 344 F.3d 832, 868-869 (upholding use of Census
9 Bureau data to delineate urbanized areas subject to permit jurisdiction).);

10 D. Failed to assure that the SWMP's components satisfy the Clean Water Act's
11 mandate to require "controls to reduce the discharge of pollutants to the
12 maximum extent practicable" (General Permit Fact Sheet, pp. 8-9; General
13 Permit, Finding 14; General Permit ¶ D.1; 33 U.S.C. § 1342(p)(3)(B)(iii);
14 40 C.F.R. §§ 122.34(a),(b), 122.26; *Environmental Defense Center v. EPA*
15 (9th Cir. 2003) 344 F.3d 832; *Building Industry Association v. State Water*
16 *Resources Control Board* (2004) 124 Cal.App.4th 866; *Defenders of Wildlife*
17 *v. Browner* (9th Cir. 1999) 191 F.3d 1159.)

- 18 • SWMP inappropriately deferred development of numerous plans.
- 19 • SWMP failed to meet MEP regarding school education outreach
20 program.
- 21 • SWMP failed to meet MEP regarding targeted audience outreach
22 programs.
- 23 • SWMP failed to meet MEP regarding measurements of public
24 outreach effectiveness.
- 25 • SWMP failed to meet MEP regarding storm drain stenciling.
- 26 • SWMP failed to meet MEP regarding water quality monitoring.
- 27 • SWMP failed to meet MEP regarding public
28 involvement/participation.

- SWMP failed to meet MEP regarding illicit connection and illegal discharge detection and elimination.
- SWMP failed to meet MEP regarding industrial and commercial inspection commitment and frequency.
- SWMP failed to meet MEP regarding a comprehensive construction site storm water runoff control program.
- SWMP failed to meet MEP regarding identification of minimum BMP requirements for all construction sites.
- SWMP failed to meet MEP regarding identification of construction sites to which SWMP applies.
- SWMP failed to meet MEP regarding review of construction site Storm Water Pollution Prevention Plans.
- SWMP failed to meet MEP regarding construction site inspection frequency.
- SWMP failed to MEP regarding a comprehensive post-construction storm water management in new development and redevelopment component.
- SWMP failed to meet MEP regarding details to assess compliance with General Permit Attachment 4 (post-construction BMP implementation and maintenance).
- SWMP failed to meet MEP regarding details for the pollution/prevention good housekeeping for municipal operations component.
- SWMP failed to meet MEP regarding street sweeping frequency.
- SWMP failed to meet MEP regarding storm drain maintenance criteria and frequency.
- SWMP failed to assure control of storm water pollution impacts on environmentally sensitive areas, areas of special biological

significance, and endangered or threatened species, such as the California Sea Otter.

- SWMP failed to assure compliance with receiving water limitations language in the General Permit, Attachment 4.

- E. Failed to recognize the “iterative process” as a remedy for BMP failure to achieve MEP water quality standards and instead applied the concept to the process of developing a SWMP. (General Permit Fact Sheet, pp. 8-10 (description of iterative process as applied to MEP and Receiving Water Limitations); contrast with General Permit Fact Sheet, p.7 (regarding full implementation of SWMP by end of permit term); accord General Permit, Findings 17, 19;
- F. Failed to assure that the SWMP and underlying programs contained therein, would prevent regulated discharges from causing or contributing to violations of water quality standards. (General Permit Fact Sheet, p.10.);
- G. Failed to hold the hearing in the affected community of Santa Barbara County, thereby chilling public participation despite federal and state recognition of its importance. (40 C.F.R. §§ 25.3, 25.5; Water Code §§ 13384, 13801; Cal. Code Regs. § 11508.);
- H. Failed to adequately respond to factually and legally specific comments from public interest organizations concerning the most highly significant matters at issue, such as the SWMP’s compliance with the maximum extent practicable standard and other related matters. (33 U.S.C. § 1342(a)(1); 40 C.F.R. § 25.5; 40 CFR § 122.34(b).);
- I. Acted in approving the SWMP in these respects without evidence in the record and based upon facially inaccurate and misleading analyses by staff (Cal. Code Proc. § 1094.5.);
- J. Participated in improper *ex parte* communications with the applicant in violation of the state law and regulations. (SWRCB Policy. *Ex Parte*

1 communications, Feb. 2001; Cal.Gov't Code §§ 11430.10, 11430.40,
2 11430.80). The Board failed to satisfy statutory obligations in connection
3 with improper *ex parte* communications prior to and after objections
4 received. (Cal. Gov't Code § 11430.50.);

5 K. Failed to act in accordance with 40 C.F.R. § 25.4, which states that "Public
6 consultation must be preceded by timely distribution of information and
7 must occur sufficiently in advance of decision-making to allow the agency
8 to assimilate public views into agency action."

9 L. Failed to act in accordance with federal and state agency policy, which
10 states that:

11 (1) Public agencies should encourage full presentation of issues at an
12 early stage so that they can be resolved and timely decisions can be made;

13 (2) The government should not make any significant decision on any
14 activity covered by this part without consulting interested and affected
15 segments of the public;

16 (3) Government action should be as responsive as possible to public
17 concerns;

18 (4) Public involvement in implementing environmental laws should
19 be encouraged;

20 (5) The public should be kept informed about significant issues and
21 proposed project or program changes as they arise;

22 (6) All feasible means should be used to create opportunities for
23 public participation, and to stimulate and support participation; and

24 (7) Agencies should foster a spirit of openness and mutual trust
25 among EPA, States, substate agencies and the public. (See 40 C.F.R. §
26 25.3.);

27 M. Failed to provide adequate public notice and opportunity to be heard "at a
28 meaningful time and in a meaningful manner." (See *Armstrong v. Manzo*

(1965) 380 U.S. 545, 552; *Gross v. Lopez* (1975) 419 U.S. 565 (notice of action and facts on which it is based); 40 C.F.R. §§ 25.4; 124.10; 124.12; Cal. Gov't Code § 11425.10.); and

N. Failed to provide a fair hearing, including fair procedure, in accordance with Cal. Code Civ. Pro. § 1094.5, which governs the inquiry into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given. "The inquiry in such a case shall extend to the questions whether . . . there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Cal. Code Civ. Pro. § 1094.5(b); see also, *Morgan v. U.S.* (1938) 304 U.S. 1, 18 (fairness requirement extends not only to the hearing but also to all procedures before and after the hearing); *Vollstedt v. City of Stockton* (1990) 220 Cal. App. 3d 265 (question of whether hearing is fair encompasses actions of agency that occur outside of actual hearing; and plaintiff did not receive fair hearing where city did not follow procedure codified by its own ordinance); *Hackethal v. Loma Linda Community Hosp. Corp.* (1979) 91 Cal. App. 3d 59, 62 (affirming that plaintiff did not receive a fair administrative hearing where defendant failed to follow its own procedural bylaws).

5. HOW THE PETITIONERS ARE AGGRIEVED:

Petitioners NRDC and Heal the Ocean are non-profit, environmental organizations that have a direct interest in protecting, *inter alia*, the quality of waters in Santa Barbara County, including the Santa Maria and Santa Ynez Rivers, their tributaries, and the ocean. NRDC represents approximately 130,000 members in California, thousands of whom reside in Santa Barbara County. Heal the Ocean is a grass roots organization dedicated to protecting watersheds and coastal resources throughout Santa Barbara County. Petitioners' members are aggrieved by

1 the SWMP's inadequacy and, thereby, the County's inability to control polluted urban runoff or to
2 protect the beneficial uses of receiving waters in accordance with the Clean Water Act. In
3 particular, Petitioners' members directly benefit from Santa Barbara County waters in the form of
4 recreational fishing, hiking, swimming, photography, bird watching, and boating.

5 The Regional Board's failure to control urban storm water runoff through this SWMP has
6 enormous consequences for the region and its residents. Urban storm water runoff, one of the
7 largest sources of pollution to the coastal and other receiving waters of the nation, is a known
8 problem in the Santa Barbara region. Pollutants conveyed in storm water and urban runoff
9 (collectively referred to as "storm water") now constitute one of the greatest sources of pollution to
10 the region's waterways. Consequently, storm water pollution, which not only harms the
11 environment, but also has been shown to cause serious human health impacts, is the most severe
12 water quality problem facing the region.

13 In the past three decades, mass emissions of urban runoff-borne pollutants have increased
14 dramatically in urban and suburban areas of southern California, despite the decrease of toxic
15 pollutants from waste water discharges from publicly owned treatment works. Additionally,
16 several studies suggest a causal relationship between gastro-intestinal symptoms and recreational
17 water quality. In this connection, storm water quality can greatly impact swimming and fishing,
18 both major recreational beneficial uses of Santa Barbara County waters, because pathogens carried
19 by the storm water into the surf zone degrade water quality to the extent that it is unsafe for human
20 contact. Further, the high concentrations of pollutants in storm water pollution adversely impact
21 marine animals and plant life in Santa Barbara County waters. Because these beaches attract
22 numerous visits from both residents and tourists each year, the magnitude of this problem is
23 considerable. Ultimately, storm water pollution can also translate into significant economic losses
24 considering the 653 beach closures and advisories County-wide in 2005, which was second only to
25 Los Angeles County and almost double 2004 figures (330).

26 In sum, these documented facts demonstrate the considerable negative impact on
27 Petitioners' members and the environment that continues today as a result of the Regional Board's
28 inability to control storm water pollution through the SWMP.

1 6. THE ACTION PETITIONERS REQUEST THE STATE BOARD TO TAKE.
2

3 Petitioners seek an Order by the State Board that:

4 Overturns the Regional Board's approval of the Storm Water Management Program
5 for the County of Santa Barbara, Resolution No. R3-2006-0045.

6 Remands the matter to the Regional Board with specific direction to remedy each of
its violations of law as further described herein.

7 7. A STATEMENT OF POINTS AND AUTHORITIES FOR ANY LEGAL ISSUES
8 RAISED IN THE PETITION, INCLUDING CITATIONS TO DOCUMENTS OR
HEARING TRANSCRIPTS THAT ARE REFERRED TO.

9 See Section 4, above. Petitioners reserve the right to supplement the legal arguments and
10 authorities in support of this Petition.
11

12 8. A STATEMENT THAT COPIES OF THE PETITION HAVE BEEN SENT TO THE
13 REGIONAL BOARD AND TO THE DISCHARGER,

14 A true and correct copy of this petition was sent via First Class mail on August 7, 2006 to
15 the Regional Board and Permittee at the following addresses:

16 Roger Briggs, Executive Officer
17 California Regional Water Quality Control Board
18 Central Coast Region
895 Aerovista Place
Suite 101 San Luis Obispo, CA 93401

19 Mr. Rob Almy
20 Santa Barbara County Water Agency
Department of Public Works
21 123 E. Anapamu Street
Santa Barbara, California 93101
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1 9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED
2 TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN
3 EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE
4 OBJECTIONS BEFORE THE REGIONAL BOARD.

5 NRDC and HTO made every effort to resolve this matter before the Regional Board. The
6 issues relevant to this Petition were raised prior to the July 7, 2006 hearing during in-person
7 meetings and in writing. These issues were further presented orally and through a power point
8 presentation at the July 7th hearing. A copy of the power point presentation is part of the
9 administrative record in this matter.

10 Respectfully submitted via electronic mail and U.S. Mail.

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12 Dated: August 4, 2006

NATURAL RESOURCES DEFENSE COUNCIL, INC.

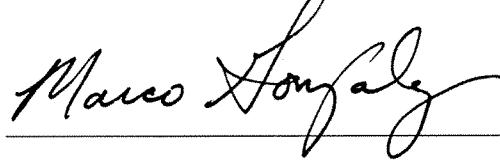
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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, California**

**RESOLUTION NO. R3-2006-0045
July 7, 2006**

**County of Santa Barbara Storm Water Management Program
Santa Barbara County**

The Regional Water Quality Control Board, Central Coast Region ("Water Board" or "Central Coast Water Board") finds:

1. On December 8, 1999, the U.S. Environmental Protection Agency ("EPA") promulgated regulations under authority of the Clean Water Act ("CWA") Section 402(p)(6). These regulations required NPDES storm water permits for operators of small municipal separate storm sewer systems ("Small MS4s") that discharge to waters of the U.S.
2. On April 30, 2003, the State Water Resources Control Board ("State Water Board") adopted Order No. 2003-0005 DWQ (NPDES Permit No. CAS000004) Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems ("General Permit").
3. The General Permit requires regulated Small MS4s to develop a storm water management program ("SWMP") designed to reduce pollutant discharge to the maximum extent practicable ("MEP") and to protect water quality. The SWMP must contain Best Management Practices ("BMPs") that address six Minimum Control Measures. SWMPs must incorporate measurable goals and implementation time schedules, and must be available for public review and comment and are subject to a public hearing if requested prior to approval. Upon approval of a SWMP by the appropriate regional water quality control board or its Executive Officer, permit applicants obtain coverage under the General Permit.
4. The State Water Board found, and the Central Coast Water Board concurs, that implementing storm water quality programs that address the six Minimum Control Measures in previously unregulated areas will decrease the pollutant loading to the receiving waters and improve water quality.

5. The State Water Board found the General Permit to be consistent with the anti-degradation policies of 40 CFR Section 131.12, SWRCB Resolution 68-16, and the Central Coast Water Board's Basin Plan.
6. This action to approve the County of Santa Barbara SWMP is exempt from the California Environmental Quality Act pursuant to Water Code Section 13389.
7. The County of Santa Barbara evaluated local water quality, BMP applicability, expected BMP effectiveness, and technical and economic feasibility in developing the SWMP. Specific BMPs were identified from community input, review of other programs, and evaluation of various BMP manuals and lists.
8. The County of Santa Barbara submitted a SWMP and Notice of Intent to comply with the General Permit on March 10, 2003. In response to Water Board staff review and comments, the County prepared three revised SWMPs.
9. Following public notice in accordance with State and federal laws and regulations, the Water Board, in a public hearing on July 7, 2006, heard and considered all comments on the SWMP.
10. The Water Board finds that the SWMP is designed to reduce the discharge of pollutants to the MEP standard established in the General Permit for these reasons: 1) The SWMP meets and/or exceeds the Phase II General Permit requirements for all six Minimum Control Measures; 2) The chosen BMPs address both the research-based urban pollutants, and the locally-documented pollutants of concern; 3) the SWMP employs all applicable BMPs except those that are not technically feasible in the locality, or whose cost would exceed the benefit to be derived, or where other selected BMPs achieve the same water quality protection or serve the same purpose, or where the cost of the BMPs would be prohibitive; and 4) the five-year program prescribed by the SWMP provides a logical progression of BMP implementation to meet a full program realization within the permit term.
11. Attachment 4 of the General Permit includes Design Standards that apply to traditional and nontraditional Small MS4s serving a population of 50,000 people or more, or that are subject to high growth¹. Attachment 4 addresses post-construction requirements and compliance with water quality standards. It also includes receiving water limits necessary to protect water quality. The County of Santa Barbara meets the Attachment 4 designation criteria. The SWMP requires the County to comply with Attachment 4.
12. Section 402(p)(3)(B)(iii) of the Clean Water Act requires controls that reduce pollutants to MEP, and "such other provisions as the Administrator or the State

¹ "High growth" is defined by the Permit as areas which have experienced more than 25% population growth over years 1990 - 2000, or are expected to grow more than 25% between 1999 - 2009.

determines appropriate for the control of such pollutants." The General Permit requires permittees to develop a SWMP designed to reduce the discharge of pollutants to MEP and to protect water quality. (General Permit Finding 14, page 3 and Provision D, pg.8.)

13. The General Permit allows permittees five years from the date of SWMP approval to fully implement the SWMP.
14. The SWMP requires the County of Santa Barbara to develop and implement programs and model ordinances within five years to achieve MEP. The specific provisions of some of these programs will be developed after SWMP approval, and will be subject to public review. The General Permit allows the Executive Officer to require changes to the SWMP (including the model ordinances and other program details) as necessary to meet the MEP standard, and to require additional monitoring and reporting.

THEREFORE, BE IT RESOLVED THAT:

1. The Central Coast Water Board hereby approves the County of Santa Barbara Storm Water Management Plan, subject to Paragraph 2. Coverage under the General Permit commences on the date this Resolution is adopted.
2. Pursuant to Section G of the General Permit, the County of Santa Barbara is required to amend the SWMP no later than August 31, 2006, to include the following provisions. Failure to make these revisions may subject the County of Santa Barbara to enforcement action:
 - a. On page 1-3 under the Green Gardner Certification Program bullet, the last sentence must be updated to reflect that a program assessment tool will be developed by September 2006.
 - b. Clarify the frequency of stakeholder meetings in the first bullet on the top of SWMP page 2-6. Remove bi-monthly and indicate that the County will hold three South County stakeholder meetings per year and three North County stakeholder meetings per year. Include information regarding stakeholder involvement in the annual report review process.
 - c. Include permit area maps with waterbodies clearly delineated.
 - d. The County must clearly define the Voluntary Water Quality Sampling program, on SWMP page 2-4, within permit year one. The County must include information regarding the constituents that will be monitored, the number of monitoring locations, and the monitoring frequency.
 - e. The unincorporated urbanized area of Mission Hills must be included as part of the permit area.
 - f. The Illicit Discharge Field Investigation and Abatement BMP must include routine inspection and enforcement protocols for the two new illicit discharge programs discussed in the last paragraph of page 3-9 and the first paragraph on page 3-10. Update the measurable goals on

page 3-26 under the Illicit Discharge Field Investigation and Abatement to include inspection and enforcement goals.

- g. The discretionary permit review process listed on page 5-12, which requires the County to evaluate 100% of discretionary projects, will start in year 1 rather than year 2.
- h. Append the Final Program Environmental Impact Report Updated Routine Maintenance Program (November 2001) for the County Flood Control District, which includes BMPs for Flood Control District Maintenance Projects.
- i. Include the following MEP language on page xiii following the second paragraph: "The MEP standard involves applying best management practices (BMPs) that are effective in reducing the discharge of pollutants in storm water runoff. In discussing the MEP standard, the State Board has said the following: "There must be a serious attempt to comply, and practical solutions may not be lightly rejected. If, from the list of BMPs, a permittee chooses only a few of the least expensive methods, it is likely that MEP has not been met. On the other hand, if a permittee employs all applicable BMPs except those where it can show that they are not technically feasible in the locality, or whose cost would exceed any benefit to be derived, it would have met the standard. MEP requires permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive." (Order No. WQ 2000-11, at p.20.) MEP is the result of the cumulative effect of implementing, continuously evaluating, and making corresponding changes to a variety of technically and economically feasible BMPs that ensures the most appropriate controls are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the iterative approach (see question 4). For Small MS4s, EPA has stated that pollutant reductions to the MEP will be realized by implementing BMPs through the six minimum measures described in the permit. (64 Federal Register 68753.)"
- j. Remove the final paragraph on SWMP page xvii regarding budgetary constraints which states:

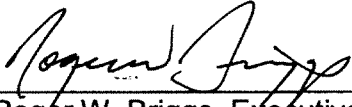
"However, the County has a concern regarding the impracticability of program implementation due to unexpected adverse fiscal events beyond the control of the County. Specifically, the revenues received by the County are constrained by state law, the annual actions of the State Legislature and Governor in the state budget process, and the State constitution. In the event that substantial revenue reductions occur, a consideration of the County financial situation would occur in the annual review process with evaluation for compliance with the MEP standard, as required by the General Permit."
- k. In the first paragraph on page xviii, indicate that monitoring reports will be submitted to the Water Board on an annual basis and remove

"starting in August 2004." In the first sentence of the last paragraph on the same page the SWMP should indicate that the County will submit annual reports pursuant to the reporting requirement of the General Permit. Remove the statement, "to state guidance provided in the Final Draft from March 4, 2004."

- I. Modify the first sentence of the third bullet on page 3-26 to read, "Respond to 100% of calls to County Departments within 24-hours." Make the same change to the third bullet in the "Measurable Goal" column on page 3-29. Modify the first sentence on page 3-27 in the "Implementation Details" column for Years 2-5 to read, "Annual report will include enforcement activities and follow-up abatement results of all County agencies, including follow-up on referrals to other agencies or entities."
3. The County of Santa Barbara shall provide a copy of the revised pages of the SWMP to the Water Board no later than September 15, 2006, pursuant to Water Code Section 13383.

Any person affected by this action may petition the State Water Board to review the action in accordance with section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The State Board must receive the petition within 30 days of the date of this Resolution. Copies of the law and regulations applicable to filing petitions will be provided upon request.

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Coast Region, on July 7, 2006.



Roger W. Briggs, Executive Officer